

REMARKS

Applicant submits that the present amendment is fully responsive to the Office Action dated May 12, 2005 and, thus, the application is in condition for allowance.

By this reply, claims 51 is canceled and claims 50, 52, 53, 58, 59 and 62 are amended. Claims 29-34, 37-45 and 47 remain withdrawn from consideration at this time. Claims 48, 50 and 52-67 remain pending. Of these, claims 48, 50, 52, 53, 58, 59 and 62 are independent. An expedited review and allowance of the application is respectfully requested.

In the outstanding Office Action, claims 29-34, 37-45, 47, 56, 60 and 65 were withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected species. Furthermore, claims 56, 60 and 65 were added to the withdrawn list because the subject matter claimed therein, “a partially open opening,” is not deemed part of the embodiment of Figure 9a. Applicant respectfully traverses.

Applicant directs attention to paragraph 71 of the application as filed, wherein a discussion of the particular embodiment shown in Figure 9a describes an opening that extends through the upper jaw that can be removed from around the side of a suture strand. This ability is with respect to the particular embodiment shown in Figure 9a, and as elected herein. Thus, examination of claims 56, 60 and 65 are hereby requested as they are drawn to the elected species. Applicant further respectfully requests, upon allowance of independent claims, a re-review of the claims that are currently deemed as withdrawn to determine their patentability as is the duty according to MPEP § 803.

In the outstanding Office Action, claims 50, 52-55, 57-59, 61-64, 66 and 67 were rejected under 35 U.S.C. § 102(b) as being anticipated by McGuckin (U.S. Pat. No. 5,868,760). It is asserted that McGuckin discloses an elongate member internal forceps (202) with an opening

between jaws 204 which could receive a suture; and an outer hollow body 16 having a lumen for receiving the forceps and two jaws 22, 24, one of which is movable relative to the other one. Thus, it is concluded that McGuckin anticipates the present invention as recited in the claims. Applicant respectfully traverses.

Neither McGuckin, nor any other related art of record, alone or in combination, disclose or fairly suggest the present invention as recited in the pending claims. Independent claims 50, 52, 53, 58, 59 and 62 have been presented which clearly and fairly distinguish the present invention from that of the art of record. They have support in the original application and claims as filed and contain no new matter. To the extent that the prior rejection is deemed to be applicable to the newly presented and pending claims, they are respectfully traversed.

The present invention, as recited in the pending claims, discloses a device that includes an elongated or tubular structure having some type of lumen to be able to receive a needle or similar structure. Furthermore, a grasping mechanism is included or connected to the device such that the grasping mechanism maintains tissue in a relatively stable position while the needle pushes suture through the tissue. Furthermore, the grasping mechanism is designed to hold the tissue in place and not destroy, cut or resect the tissue, as are the functions of the jaws in the McGuckin device. The McGuckin device resections the tissue using the jaws and does not allow a needle or other device to advance outside of the confines of the jaw while the jaw is maintaining the tissue held within. The present invention allows the needle to advance outside the confines of the closed jaw while it gently maintains the tissue in place without destroying it. Such mechanism or ability is neither specifically disclosed nor fairly suggested by McGuckin. Even if, *arguendo*, McGuckin discloses the ability to suture tissue and hold the tissue before resectioning, the devices shown by McGuckin are not able to function in the way disclosed and

claimed herein by both holding tissue gently and advancing suture therethrough to the outside of the jaws by a natural curve of the needle. Thus, McGuckin cannot render the present claims as anticipated or obvious. Furthermore, McGuckin cannot be used in combination with any other related art of record to obviate the present invention as recited in the claims.

Applicant graciously acknowledges the allowance of claim 48. Applicant further incorporates the recitation of objected claim 51 into its parent independent claim 50, and cancels claim 51. Thus, claim 50 should be allowable. Currently, claims 48, 50 and 52-67 remain pending in this application.

If any fees are associated with the entering and consideration of this preliminary amendment, please charge such fees to our Deposit Account 50-2882.

As all of the outstanding rejections have been traversed and all of the claims are believed to be in condition for allowance, Applicant respectfully requests issuance of a Notice of Allowance. If the undersigned attorney can assist in any matters regarding examination of this application, Examiner is encouraged to call at the number listed below.

Respectfully submitted,

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